

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CHRISTINE TOWNSEND,

Plaintiff,

v.

CITY OF BUFFALO, et al.,

Defendants.

DECISION AND ORDER
15-CV-704-A

This civil-rights action alleges police misconduct under 42 U.S.C. § 1983 and New York law. It arises from events during the early morning hours of May 9, 2014, following plaintiff's three 911 calls to Buffalo Police about two pit bulls jumping around and barking on her front porch at 59 Briggs Street, Buffalo, New York. The barking pit bulls were disturbing plaintiff, her young daughter, and plaintiff's three dogs. When Buffalo Police officers arrived at 59 Briggs Street, approximately two hours after the plaintiff's first 911 call, an argument broke out between police officers and the plaintiff, the plaintiff was arrested, and the plaintiff claims she was injured primarily during an allegedly excessively forceful arrest.

The case was referred to Magistrate Judge H. Kenneth Schroeder, Jr., for the conduct of pretrial proceedings pursuant to 28 U.S.C. § 636(b)(1). On March 5, 2018, Magistrate Judge Schroeder filed a Report and Recommendation (Dkt. No. 39) recommending that Defendants' motion for summary judgment pursuant Fed. R. Civ. P. 56 (Dkt. No. 28), be granted, in part, and denied, in part. Magistrate Judge Schroeder recommended summary judgment be granted in defendants' favor on plaintiff's Second, and Sixth through Eighth causes of action, and in favor of defendant Craig on plaintiff's

Ninth cause of action.

Defendants object to the Report and Recommendation to the extent it denies summary judgment. Pursuant to 28 U.S.C. §636(b)(1), the Court makes a *de novo* determination of those portions of the Report and Recommendation to which objections have been made. The Court has carefully reviewed the Report and Recommendation, the objections, and the response of plaintiff. The Court adopts the Report and Recommendation, in part. Because criminal charges against plaintiff were dismissed at arraignment, before any post-arraignment deprivation of liberty, summary judgment is granted on the plaintiff's malicious-prosecution § 1983 cause of action — the Ninth cause of action — in its entirety. See *e.g.*, *Rohman v. New York City Transit Auth. (NYCTA)*, 215 F3d 208, 215 (2d Cir. 2000). The Report and Recommendation (Dkt. No. 36) is otherwise adopted.

For the foregoing reasons, defendants' motion for summary judgment pursuant to Fed. R. Civ. P. 56 is granted in defendants' favor on plaintiff's Second, and Sixth through Ninth causes of action. The Clerk shall amend the caption to reflect that Officer Mark Vara and Officer Kelly Craig are the only remaining defendants.

Jury selection is scheduled for October 10, 2018, at 9:30 a.m., and the trial shall continue from day to day thereafter until complete. A final pretrial order will issue.

IT IS SO ORDERED.

Richard J. Arcara
HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT COURT

Dated: June 1, 2018

